IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

J U D G M E N T

S.B. CIVIL MISC. APPEAL NO. 1152/2006

SMT. PHOOLA DEVI Vs. RAJNEESH & ORS.

DATE: 06.02.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. K.C. Sharma for the appellant.
Ms. Aradhana Sharma for the respondents.

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The present civil misc. appeal is directed against the judgment dated 06.03.2006 passed by the Additional District Judge, Jhunjhunu in Civil Appeal No. 25/05. The appellant has raised preliminary issue that the appeal which was preferred before the learned Additional District Judge against the order and decree dated 19.01.2005 was not maintainable as the maternal Aunt (Nani) was not party to the suit and she is having no locus standi to file the appeal.

Hon'ble the Supreme Court in the case of ***Baldev Singh Vs. Surinder Mohan Sharma & Ors., reported in 2003(1) WLC(SC) Civil 398,*** held that the appeal maintainable only by person aggrieved- Court cannot enlarge the scope locus .

He further submits that since 'Nani' was not party to the suit, therefore without first moving

application for impleading as party and without having locus, she cannot file the appeal before the Appellate Court. Learned counsel for the appellant also submits that even the respondents wanted to file the appeal before the Additional District Judge, Jhunujhunu and that can only be filed obtaining leave of the Court of appeal but not otherwise as held by the Division Bench of this Court in the case of ***Heersingh and others Vs . Veerka and another, reported in AIR 1958 Rajasthan 181.***

I have considered the rival submissions of the respective parties and have also considered the ratio decided by the Hon'ble Supreme Court and the Division Bench of this Court in the aforementioned cases.

I am of the view that the Appellate Court has not considered this aspect and only states that in the interest of justice the matter is remanded back to the trial Court for fresh adjudication on merit by passing speaking order.

In the interest of justice, I deem it proper to quash and set-aside the impugned judgment dated 06.03.2006 passed by the Appellate Court and remanded the matter back to the Appellate Court to decide the matter afresh whether maternal Aunt (Nani) of Ranjeesh is having a locus to file the appeal or not?

With these observations, the civil misc. appeal stands allowed.

Record be sent back forthwith.

(K.S. RATHORE),J.

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